IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 10615 OF 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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VINODBHAI VASANTBHAI PATEL - Petitioner(s)
Versus
GUJARAT REVENUE TRIBUNAL & ORS. - Respondent(s)

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Appearance :
SHRI VIREN DAVE for SHRI YOGESH S. LAKHANI for Petitioner(s).
SHRI HUKUM SINGH, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/02/2007

ORAL JUDGMENT

1. The short facts necessary for disposal of the present petition are that the petitioner's grandfather, Narottam Jivanjibhai Patel, submitted Form No.2, submitting, *inter alia*, that he was holding 36 Acres and

18 Gunthas land. On scrutiny and inquiry, the Mamlatdar cum-Agricultural Land Tribunal held that the petitioner's grandfather was holding 73 Acres and 9 Gunthas *jirayat* land (cultivable land), the petitioner's grandfather was entitled to one unit equivalent to 30 Acres of land. He, accordingly, declared 43 Acres and 9 Gunthas as surplus. The order was challenged in Ceiling Appeal No.59 of 1982 and on dismissal of the said appeal, the petitioner's grandfather took up the matter to the Gujarat Revenue Tribunal, which allowed Revision Application No.101/1982 and remanded the matter to the Mamlatdar-cum-Agricultural Land Tribunal.

1.1 After remand, the Mamlatdar-cum-Agricultural Land Tribunal declared 43 Acres and 6 Gunthas land as excess; Appeal No.131/1986 against the said order was dismissed by the Deputy Collector on 15th July, 1986, but, the Gujarat Revenue Tribunal, in its Order dated 16th August, 1988 passed in Revision Application No.92 of 1986, remanded the matter back to the subordinate authorities.

1.2 On 29th August, 1990, the Mamlatdar-cum-Agricultural Land Tribunal declared 49 Acres and 15 Gunthas as excess, the said order was challenged by the

State Government in Appeal No.47 of 1990 and by the petitioner in Appeal No.41 of 1990; the appeals were allowed and the matter was remanded to the Mamlatdar for rehearing.

1.3 In the fourth round of litigation, *vide* Order dated 15th January, 1991, the Mamlatdar-cum-Agricultural Land Tribunal, after calculating the land, declared 62 Acres and 39 Gunthas as excess. Aggrieved by the said order, the State Government and the petitioner preferred an appeal to the Deputy Collector, who, *vide* his Order dated 30th September, 1991 dismissed Appeal No.37 of 1991 filed by the petitioner, but, allowed Appeal No.52 of 1991 filed by the State Government, and remanded the matter to the limited extent that if the total land was 95 Acres, then, why only 62 Acres and 39 Gunthas land was declared surplus. The said order came to be challenged by the petitioner before the Gujarat Revenue Tribunal in Revision Application No.TEN/BS/3/92.

1.4 It was submitted by the petitioner that the subordinate authorities were unjustified in holding that 6 Acres and 10 Gunthas of land of Survey No.180 could be taken to be irrigated land. It was submitted that the canal was filled with sand and the petitioner had not

deposited any money to obtain facility of lift irrigation. This was the only question raised by the petitioner before the Gujarat Revenue Tribunal.

1.5 After hearing the parties, the Gujarat Revenue Tribunal held that the petitioner's submissions were justified and he could be held to be in possession of 89 Acres and 10 Gunthas only. It, accordingly, held that the petitioner would be entitled to one unit and 59 Acres and 4 Gunthas was held excess. The petitioner now aggrieved by the said order passed by the Tribunal is before this Court.

2. Shri Dave learned Counsel for the petitioner, after taking me through the entire records and the orders passed by the authorities, submitted that the petitioner's land could not be declared surplus.

3. On the other hand, Shri Hukum Singh, learned Counsel for the State, submitted that the present Writ Petition is absolutely misconceived and not maintainable because the questions argued before the Tribunal were decided in favour of the petitioner and the petitioner now cannot be allowed to raise any question, which he did not raise before the Tribunal.

4. After going through the order passed by the Gujarat Revenue Tribunal, which records that the petitioner had raised only one ground regarding Survey No.180, I must hold that as the full relief, as submitted by the petitioner, had been given to him by the Tribunal, the petitioner would not be entitled to challenge the order passed by the Tribunal on any other count. I could understand if the petitioner had raised many arguments and objections before the Gujarat Revenue Tribunal, and some were accepted and some were rejected. If the petitioner raised a single ground and that has been finally decided, then, the petitioner would not be allowed to raise any ground other than what was raised before the Tribunal. I find no reason to interfere.

5. At this stage, Shri Dave, learned Counsel for the petitioner, submits that the interim relief granted earlier be continued for some time, enabling the petitioner to file an appeal. I am sorry to record that in a case like present where the petitioner's petition is held to be not maintainable and is being dismissed on that count, the learned Counsel for the petitioner could not make a prayer for extension of the interim relief. The prayer is rejected.

6. The petition is dismissed with costs of Rs.5,000/-, which shall be paid by the petitioner to the State Government. Rule is discharged. Interim relief granted earlier shall stand vacated.

[R.S.Garg, J.]

*kamlesh**